

Scott Glass Products, Inc. and Johnny Ward. Cases 16-CA-8762, 16-CA-8867, 16-RC-8028, and 16-CA-8839

May 14, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND
MEMBERS FANNING AND ZIMMERMAN

On August 28, 1981, Administrative Law Judge Frederick C. Herzog issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, as well as a motion to reopen the record.¹ General Counsel filed an opposition to Respondent's motion.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,² and conclusions of the Administrative Law Judge and to adopt his recommended Order.

The Administrative Law Judge found that employee sentiment, once expressed through authorization cards, would be best protected by a bargaining order. We agree. A summary of the events in question reveals that, shortly after three employees met with Respondent's general manager to voice complaints, the leader of the group was threatened with discharge. Soon thereafter, employees approached the Union. The employees' card solicitation efforts were met by threats made by both high and low levels of supervision of more onerous working conditions, plant closure, and loss of jobs should the employees vote in the Union. Also, in a complete reversal of his statement of only 3 weeks earlier, Respondent's general manager called an extraordinary meeting of *all* employees at which a larger-than-normal wage increase was announced. At the meeting, all employees were also handed a previously composed memo detailing Respondent's stance toward unionization, employees were told

that voting in the Union would be futile, and employees' grievances were solicited. Finally, a supervisor imposed a rule on an employee against discussion of the wage increase.

This clear pattern of unlawful conduct began almost simultaneously with the employees' organizational efforts. It involved all levels of supervision at the plant. In a plant as small as the one involved, Respondent's conduct could be expected to have a direct impact on all 34 eligible members of the unit. Respondent's behavior toward its employees was envisioned by the Supreme Court in *N.L.R.B. v. Gissel Packing Co., Inc.*, 395 U.S. 575, 614 (1969), wherein the Court approved the Board's use of a bargaining order "in less extraordinary cases marked by less pervasive practices which nonetheless still have the tendency to undermine majority strength and impede the election processes." The pattern of conduct practiced by Respondent is similar to situations where the Board and the courts have found bargaining orders warranted to protect employee sentiment, originally expressed through the signing of authorization cards.³ Respondent's unfair labor practices were clearly designed to undermine the Union's majority status⁴ and are of a type that will leave a lingering effect on Respondent's complement of employees. Respondent's contention that the atmosphere at the plant has been changed because of the substitution of a new general manager is unpersuasive. The actual conduct of Respondent's general manager and supervisors would overshadow any subsequent statements by Respondent that its employees should feel free to vote according to their choice in an election. It is mere speculation that the affected employees could engage in an uncoerced selection or rejection of the Union. The employees' sentiment is best protected by the imposition of a bargaining order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Scott Glass Products, Inc., Pacola, Oklahoma, its officers, agents, successors, and assigns, shall take the action

¹ We deny Respondent's motion to reopen the record for purposes of receiving evidence concerning the extent of employee turnover. The Board has long held that employee turnover will not justify the lifting of an order to bargain in situations similar to that encountered in the present case. *Gibson Products Co.*, 185 NLRB 362 (1970), enforcement denied 494 F.2d 762 (5th Cir. 1974); *Armcor Industries, Inc.*, 227 NLRB 1543 (1977), enforcement denied 588 F.2d 821 (3d Cir. 1978). *Standard-Coosa-Thatcher, Carpet Yarn Division, Inc.*, 257 NLRB 304 (1981).

² Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

³ See, e.g., *Wylie Manufacturing Co.*, 162 NLRB 799 (1967), supp. decision, 170 NLRB 991 (1968), enf'd. 417 F.2d 192 (10th Cir. 1969), cert. denied 397 U.S. 913; *Tower Enterprises, d/b/a Tower Records*, 182 NLRB 382 (1970), enf'd. 79 LRRM 2736, 67 LC ¶ 12,453 (9th Cir. 1972); *Ann Lee Sportswear, Inc.*, 220 NLRB 982 (1975), enf'd. 543 F.2d 739 (10th Cir. 1976).

⁴ Respondent's contention that the Union, by proceeding to an election, tacitly admitted that a fair election could be held is contrary to Board policy. See *Bernal Foam Products Co., Inc.*, 146 NLRB 1277 (1964).

set forth in the said recommended Order,⁵ except that the attached notice is substituted for that of the Administrative Law Judge.

⁵ Nothing in our Order should be construed as directing Respondent to rescind its wage increase announced on September 20, 1979.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

- To engage in self-organization
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To engage in activities together for the purpose of collective bargaining or other mutual aid or protection
- To refrain from the exercise of any or all such activities.

WE WILL NOT interrogate you regarding your union membership, activities, and sympathies, nor those of your fellow employees.

WE WILL NOT make statements to you creating the impression that we are engaging in surveillance of your union activities.

WE WILL NOT threaten that you will be discharged, or that the plant will be closed, or that more onerous working conditions will be imposed, or that we will make your union activities futile, in the event that you should select a labor organization to represent you, or because you have done so, or because you have engaged in any other protected, concerted activity.

WE WILL NOT attempt to undermine your support for a labor organization by directing you to refrain from talking about matters such as wages, or by telling you to bring your grievances directly to us and implying that we will remedy them only if you do not have a labor organization as your representative.

WE WILL NOT refuse to recognize Chauffeurs, Teamsters and Helpers, Local Union No. 516, as the collective-bargaining representative of:

All regular full-time and part-time production and maintenance employees employed at our Pacola, Oklahoma facility; excluding all other employees, office clerical employees, sales employees, professionals employees, guards and supervisors as defined in the Act.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in any of the rights set forth above which are guaranteed by the National Labor Relations Act.

WE WILL, upon request, recognize and bargain in good faith with Chauffeurs, Teamsters and Helpers, Local Union No. 516, as the collective-bargaining representative of the employees in the unit described above respecting rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

SCOTT GLASS PRODUCTS, INC.

DECISION

STATEMENT OF THE CASE

FREDERICK C. HERZOG, Administrative Law Judge: Based on charges filed by Chauffeurs, Teamsters and Helpers Local No. 516 (herein called the Union), and Johnny Ward, an Individual, that Scott Glass Products, Inc. (herein called the Respondent), has engaged in unfair labor practices, complaints were issued in Cases 16-CA-8762, 16-CA-8867, and 16-CA-8839, alleging violations of Section 8(a)(1) and (5) of the Act.

Based on a petition filed on September 21, 1979, by the Union, and pursuant to a Stipulation for Certification Upon Consent Election, an election was held on November 21, 1979, among the Respondent's production and maintenance employees at its Pocola, Oklahoma, facility. Of approximately 34 eligible voters, 12 cast votes for the Union and 19 cast votes against the Union, with no void or challenged ballots. On November 29, 1979, the Union filed timely objections to conduct affecting the results of the election. The Regional Director thereafter ordered that the issues raised by the Union's objections should be consolidated and heard with the issues raised in the complaint mentioned above.

Accordingly, this case was heard before me at Poteau, Oklahoma, on April 1, 2, 3, and 4, 1980, and in Fort Smith, Arkansas, on June 17 and 18, 1980. At the hearing all parties were afforded the right to participate, to examine and cross-examine witnesses, and to adduce evidence in support of their positions. In addition, the parties were afforded the right to file briefs and to make oral argument at the conclusion of the hearing.

Based on the record thus compiled, plus my consideration of the briefs filed by counsel for the General Counsel and counsel for the Respondent, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The complaints, as consolidated and amended, allege that the Respondent is an Oklahoma corporation engaged in the business of manufacturing glass products at its facility at Pacola, Oklahoma. It is further alleged that during the 12 months preceding the issuance of the complaint the Respondent purchased and received goods valued in excess of \$50,000 directly from suppliers located outside the State of Oklahoma and received gross revenues in excess of \$500,000.

Based on these allegations, which were admitted in the Respondent's answer, I find and conclude that the Respondent is now, and at all times material herein has been, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION

The complaints allege that the Union is, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act. Based upon the amendment to the Respondent's answer during the course of the hearing whereby this allegation was admitted, I find and conclude this allegation of the consolidated complaints to be true.¹

III. THE ALLEGED UNFAIR LABOR PRACTICES AND
OBJECTIONABLE CONDUCT

A. Background

The Respondent began its operations in 1975 as a semiautomatic manufacturer of glass at its sole plant located at Pacola, Oklahoma. It is undisputed that at all times material herein it had a production and maintenance work complement of 34 employees, working almost exclusively on 2 shifts. During the 2-1/2 years preceding November 6, 1979, its president and general manager was Jack Hood. Since November 8, 1979, these offices have been filled by George Collins. Each of its two workshifts was headed by a foreman. The foreman of the first shift was Bennie Brown, while Allan Jones headed the second shift, which began its workday at 3 p.m. Its only other employees were one plant engineer, one vice president for "technological aspects," one office manager, one payroll clerk, and one retail store clerk.

Prior to the fall of 1979 the Respondent's employees had not been represented for collective-bargaining purposes, although the Respondent claimed that at various times there had been rumors of talk among employees regarding a union.

B. The Employees' Protest to Hood

In early September 1979 employees Johnny Ward, Husnee Al-Hakeem, and Mary McGee went to Jack Hood. They complained to him that they needed a raise, that seniority was not given sufficient consideration in job assignments, that discipline was administered in an erratic fashion, and that some employees were over-

worked. They also inferred that their supervisor, Allan Jones, engaged in racism or favoritism. Hood promised that he would discuss their complaint with Jones, upon his return. He also urged the employees to discuss their work problems directly with their supervisor. In responding to the inquiry about a raise Hood said that low productivity prevented a raise until improvement was noted. The employees then left Hood's office and began work on their shift.

About 15 minutes later Ward was approached as he worked by Supervisor Jones.² Jones upbraided Ward for "sticking his nose in [Jones'] business" and threatened to fire him. Ward responded that his work was affected by some things that had been happening, indicating that it had not been his purpose to make trouble for Jones.

Ward's protest to Hood, in concert with Husnee Al-Hakeem and Mary McGee, concerning such basic working conditions as pay rates, assignments, discipline, and workload was, beyond question, protected activity. *Pacific Coast International Meat Co.*, 248 NLRB 1376, 1380 (1980). Thus, when Jones threatened Ward with discharge for having engaged in such activity the Respondent violated Section 8(a)(1) of the Act (as alleged in par. 7(a) of the consolidated complaint). I so find and conclude.

Jones then went and talked the matter over with Hood. They decided to call Ward in and talk to him during the next break period. They did so. Both Jones and Hood told Ward that he should attempt to resolve such problems directly with Jones before taking them over his head, to Hood. With that Ward and Jones exchanged apologies³ and, in effect, promised to work together in the future, thereby ending the meeting.

C. The Organizing Activities Begin

On September 14, 1979, employees Ward and Mike Dudley contacted the Union, speaking to its assistant business agent, George Baukman. They asked him how to go about getting union representation at their place of employment. Baukman instructed them to secure the signatures of their fellow employees on "authorization cards,"⁴ which he provided them.

² Jones apparently returned to the plant around the time that the employees' meeting with Hood ended. As Jones came into the plant he was met by inquiries from two employees (David Wilson and Charlie Kyle) as to his thoughts about "the racial riots that were getting ready to explode in the plant." They then told him that Ward, Husnee Al-Hakeem, and McGee had been in to talk to Hood before his arrival, complaining about his supervision and accusing him of racism. Jones tacitly admitted that Ward's version of this exchange was essentially correct and failed to deny that he threatened Ward. I credit Ward's testimony, as Jones' testimonial demeanor marked him as an unreliable witness to an extreme degree. Moreover, his denial that he was angry when he spoke to Ward seems neither candid nor plausible.

³ The apology notwithstanding it is clear that neither Jones nor Hood ever retracted the threat to fire Ward. Instead, as shown from Jones' testimony, the apology he made to Ward was concerned not at all with his threat to discharge Ward, but merely with the manner in which the threat was delivered; i.e., publicly.

⁴ Each such 5- by 6-inch card bore the logo of the Union's international affiliate in the upper left corner and was headed, in bold lettering, with the words "APPLICATION FOR MEMBERSHIP IN LOCAL UNION NO.—, Affiliated with the International Brotherhood of Team-

Continued

¹ Errors in the transcript have been noted and corrected.

During the next 3 days, Ward and Dudley, aided by employees Dawan Al-Hakeem and Husnee Al-Hakeem, passed out the cards to fellow employees and secured, in addition to their own, 17 signed authorization cards. Thus, the Union now claims majority representative status based upon a showing of authorization cards signed by 21 of the 34 members⁵ of the proposed bargaining unit.

D. The Petition and Election

Meanwhile, Baukman prepared a petition for a Board-conducted election and mailed it to the Board's Regional Office on September 19, 1979, where it was received on September 21, 1979. At the same time Baukman sent a letter to the Respondent, by certified mail, return receipt requested, claiming that the Union represented a majority of the Respondent's production and maintenance employees at its Pacola, Oklahoma, plant for purposes of collective bargaining. The letter went on and, among other things, named seven employees, including Husnee Al-Hakeem, Dawn Al-Hakeem and Johnny Ward, as active organizers on behalf of the Union. It also stated, "I am requesting a meeting as soon as conveniently possible for the purpose of negotiating a collective bargaining agreement." The Respondent did not, however, voluntarily recognize and bargain with the Union as Baukman had requested.

sters, Chauffeurs, Warehousemen and Helpers of America." In smaller lettering the body of each card read:

Date

Date of Application

I, the undersigned, hereby apply for admission in the above Local Union and voluntarily choose and designate it as my representative for purposes of collective bargaining, hereby revoking any contrary designation. If admitted to membership, I agree to abide by the constitution of the International as well as the Local Union Bylaws which are not in conflict with International laws and thereupon accept and assume the following oath of obligation: I pledge my honor to faithfully observe the Constitution and laws of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. I pledge that I will comply with all the rules and regulations for the government of the International Union and this Local Union. I will faithfully perform all the duties assigned to me to the best of my ability and skill. I will conduct myself at all times in a manner as not to bring reproach upon my union. I shall take an affirmative part in the business and activities of the Union and accept and discharge my responsibilities during any authorized strike or lockout. I will never discriminate against a fellow worker on account of creed, color or nationality. I will at all times bear true and faithful allegiance to the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and this Local Union.

Following this were blank spaces for personal information to be filled in by the employee; e.g., name, birthday, social security number, address, and whether or not employee was a member of a union. The reverse side of each card was blank originally. But, by the time they were introduced into evidence, 20 of the 21 cards offered bore the "date stamp" of September 21, 1979, together with the imprinted notation that they had been received on that date by the Board's Region 16 in Fort Worth, Texas. I hereby officially notice said notations, as requested by counsel for the General Counsel, as evidence of the fact that each such card was executed, if at all, no later than the date shown on its reverse side.

⁵ The number of employees to be included within the bargaining unit is conceded by the Respondent to be 34. I so find, in light of the fact that the Respondent's own payroll records for the period from September 16 to September 22, 1979, also show that there were 34 employees during the period.

Instead, on October 17, 1979, the Respondent and the Union entered into a Stipulation for Certification Upon Consent Election. The election agreement provided for an election on November 21, 1979, among a unit of:

All regular full-time and part-time production and maintenance employees employed at the [Respondent's] facility located at Pacola, Oklahoma [but excluding] all other employees, office clerical employees, sales employees, professional employees, guards and supervisors as defined in the Act.

As shown previously herein, an election was conducted as scheduled under the supervision of Board personnel. The results were that, of 34 eligible voters, 12 voted in favor of the Union and 19 voted against it. There were no void or challenged ballots. However, the Union filed timely objections to the conduct of the election, alleging in pertinent part as follows:

Supervisor William A. Jones threatened employees with discharge for concerted, protected activities, and Supervisor Jack Hood promised a wage increase during the organizing campaign and threatened employees that it would be futile to join a union as no contract would ever be signed, and orally solicited grievances of employees.

Further, supervisors informed employees it would be useless to join a union, refused to allow an employee to discuss wages and interrogated employees regarding union activities. All of the conduct complained of interfered with the outcome of the election.

The Regional Director noted the Union's reliance upon evidence connected with the then outstanding unfair labor practice complaints and ordered the consolidation for hearing of all such issues. He specifically noted that certain conduct, i.e., the announcement of a forthcoming general wage increase, occurred before the filing of the petition herein, but nonetheless ordered its litigation.

E. The Meeting of September 20, 1979, and the Wage Increase

On September 20, 1979, Hood caused all the Respondent's production and maintenance employees to be assembled so that he might speak to them. Hood announced an across-the-board wage increase for the Respondent's production and maintenance employees at this meeting. The new rates were set out on a newly revised pay schedule which Hood distributed to all employees via Supervisors Jones and Bennie Brown. Each employee was also given a copy of a memorandum, dated March 14, 1978, signed by Jack Hood, entitled "Company Policy Regarding Labor Unions."⁶

⁶ The text of the memorandum appears below:

Scott Glass Products is a non-union organization. It is our wish for it to remain that way. We prefer to deal with people directly rather than through a third party.

We recognize that from time to time we will have problems just as any organization does. However, the tensions created by the intervention of outsiders only intensify and increase those problems.

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Hood's verbal message to employees at that time, according to employee Ward, included statements that he had heard a rumor that there was an effort to organize a union going on but that a union was neither needed nor wanted, that the union would be futile, that all a union could do would be to get employees another payroll deduction, that he would not sign a contract with a union, that employees had no need to try to get a contract, and that the plant was paying the highest wages it could afford. Ward admitted, however, that Hood said that the Respondent would probably someday enter into a contract.

Dawan Al-Hakeem recalled Hood at one point stating that he would not sign a contract and could not grant a larger wage increase. He also testified that Hood told the employees that his door was always open and that they did not need anyone to bargain for them.

Employees Michael Dudley and Stephen Taylor, Jr., corroborated the testimony of Ward and Dawan Al-Hakeem to the effect that Hood told employees that the Union could not do any good, that there would be a deadlock, in addition to stressing that his door was always open to employee who could not resolve problems with their supervisors.

The Respondent presented only the testimony of Hood in opposition to the testimony of Ward, Dawan Al-Hakeem, Dudley, and Taylor, regarding the events which occurred at the meeting.⁷ Hood testified that he

We will continue, as we have done, to provide the best pay and benefits for our employees that we can afford. We will do our best to treat everyone fairly and consistently. We will be honest and open in all our dealings with all employees. The only thing a labor union could provide would be an additional deduction from your paycheck.

I want to emphasize that the presence of a union in our company can only hurt the business upon which we depend for our livelihood. You do not have to pay a third party for the fair treatment you deserve to expect from this company.

If anyone should ask you to sign a union authorization card, we are asking now for you to refuse to sign it. Anyone has a right to belong to a union. You have an equal right to choose *not* to belong to one. If any other employee or outsider should try to coerce you into signing a union card, please report this to me or to your supervisor and we will take immediate action to see that this harassment is stopped.

As I said before, we know we will have problems from time to time. We want to work with you and you with us to solve those problems. No union has ever gotten anyone his job, or helped him to keep it. We encourage you to bring your problems to your supervisor, to me personally, or to anyone else you choose, and we will do our best to solve them. Each of you is an individual, and very important to the company. You have the right to speak for yourself. I assure you that we will listen.

⁷ Supervisors Jones and Brown, though shown to have been present at the September 20, 1979, meeting, were not questioned as to what Hood told employees. I conclude that the Respondent's failure in this respect gives rise to an inference that their testimony on the subject would have supported the General Counsel's theory. *General Teamsters Local 959, State of Alaska, IBTW (Northland Maintenance)*, 248 NLRB 693 (1980).

Based on their testimonial demeanor I credit both Ward and Dawan Al-Hakeem over Hood. My finding in this is only partially supported by the testimony of Dudley and Taylor, each of whom testified with apparent truthfulness though, at the same time, with demonstrable difficulty in recalling with accuracy or in detail. I found, however, that both Ward and Dawan Al-Hakeem exhibited honesty, sincerity, and reasonable accuracy in their testimony. Hood, on the other hand, seemed both vague and evasive when questioned about his motivations and the events leading up to the meeting. And, regarding the meeting itself, his testimony was framed by leading and suggestive questions, despite the fact that I gave

announced the wage increase, and then "covered" the rumored union organizational activities and the Respondent's policy with respect thereto. Responding to suggestive questions, Hood denied that he told employees that the Respondent could not afford a union, or that it would not sign a contract with the union.

And, with respect to the motivation for the wage increase Hood testified that he had long since recommended that the raise be given, but that the Respondent's board of directors had not agreed with him, due to the Respondent's poor financial condition. He denied that the rumors of union activity in the plant had anything to do with the decision to announce a wage increase on September 20, 1979, to be effective on September 30.

I conclude that the Respondent's announcement and subsequent implementation of a substantial across-the-board wage increase was violative of Section 8(a)(1) of the Act.⁸

The across-the-board raise given here varied from the Respondent's prior practice in both time and amount and was announced on 6 days after the onset of union activities at the plant, and but 1 day before the petition was filed. The Respondent's explanation and justifications for the amount and timing of the raise are simply not credible.

Hood was admittedly aware of the activities and rumors concerning the Union⁹ by the time the wage increase was announced.¹⁰ While he attempted to portray such rumors as "run of the mill" matters, of no special concern to him, it is abundantly clear that Hood did not himself regard them as such. For the meeting of September 20, 1979, marked the sole occasion in the history of the Respondent that a meeting of all employees, from both shifts, had been held. I regard this fact as evidence of special concern on the part of Hood and the Respondent.

Hood recited a pattern of wage increases by the Respondent. He stated that it was the Company's intent to give raises every 6 months. He testified that employees

explicit warnings during the hearing regarding the effect of such questioning.

In making these credibility resolutions I have borne in mind the criminal conviction of Ward, as discussed elsewhere herein. While I find that his credibility is diminished by virtue of that conviction I also find that he retained sufficient credibility to warrant being credited over Hood.

⁸ The Respondent's repeated and vigorous objections to the introduction of any evidence of "pre-petition conduct" were, of course, overruled insofar as any such conduct might show the commission of unfair labor practices. Such objections might have merit in connection with the conduct alleged to have tainted the election, as is discussed elsewhere herein.

⁹ Hood admitted that the plant's maintenance man telephoned him on Saturday, September 22, telling him of the arrival of the "registered" letter.

¹⁰ Given the small size of the plant, and the demonstrable ease with which rumors reached the ears of management in this case, I infer that the Respondent had knowledge of the union activities of its employees, including the fact that many were being solicited to sign authorization cards, within a day or so after such activities began. *Coral Gables Convalescent Home, Inc.*, 234 NLRB 1198 (1978); *Friendly Markets, Inc.*, 224 NLRB 967, 969 (1976); *Hadley Manufacturing Corporation*, 108 NLRB 1641 (1954); compare *K & B Mounting, Inc.*, 248 NLRB 570 (1980), where no inference was held warranted due, *inter alia*, to the fact that employees conducted their union activities off the employer's premises, and there was no extrinsic evidence of knowledge by the employer. Here, in contrast, Hood admitted that Supervisor Brown had informed him of the union activities sometime prior to the September 20 meeting.

were given a 5.5-percent raise in November 1977, that another raise of 5.5 percent was given the employees in May 1978, and that a 5- to 5.5-percent raise was given employees in December 1978. However, the pattern was broken when no raise was given to the employees in 1979 prior to the September 20 meeting.

Then, despite the Respondent's inability to offer employees¹¹ hope of an upward wage adjustment less than 3 weeks previously, not only was a wage increase suddenly announced, but its amount substantially exceeded that of any previous increase. The raise granted in September 1979 was for 7 percent which exceeded the pattern, by 1.5 to 2 percent.

The Respondent sought to portray Hood's remarks about the Union during the September 20 meeting as merely incidental to his primary purpose of announcing the wage increase. In my view these efforts served only to underscore the linkage between the employees' interest in unionism and the announcement. Hood utilized a copy of the memo relating to the Respondent's policy regarding labor unions, plus prepared notes, in delivering his talk to the employees. Yet these documents deal almost exclusively with unions and arguments in support of the Respondent's expressed antipathy toward unionism. They do not contain even a mention of topics such as productivity, sales, advertising, or the Respondent's relationship to its distribution, all of which, according to Hood, were discussed.

Considering the proximity in time between the onset of union activities and the announcement of an extraordinarily large wage increase, the sudden and allegedly fortuitous reversal of the Respondent's views about the feasibility of a raise can only be viewed as highly suspicious. *Charles Batchelder Company, Inc.*, 250 NLRB 89 (1980), enforcement denied in part on other grounds 641 F.2d 33 (2d Cir. 1981); *Grande Beer Distributors, Inc.*, 247 NLRB 1280 (1980), *enfd.* as modified [bargaining order vacated] on other grounds 630 F.2d 928 (2d Cir. 1980); compare *Peavey Company*, 249 NLRB 853 (1980), where, unlike the instant case, the employer announced a change in its policy *before* the occurrence of the employees' union activities.

And such suspicions harden into firm belief when met with the Respondent's contrived and inconsistent explanations for its actions.

Hood testified that he recommended that raises be granted based on the fact that the pattern indicated that they were "due" in early summer 1979. Yet the record is silent as to why he had felt no sudden or compelling need to explain to employees that they would not receive the raise "due" in early summer 1979. If management's sense of a strong need to communicate with employees in what was, for this Respondent, an extraordinary manner, had truly been so keen as portrayed by Hood it seems logical to ask why employees were pre-

sented no explanation at all when the wage pattern was broken, and they were given no raises at all, in early summer 1979. I answer the inquiry by inferring that there must have been something other than the employees' economic well-being of prime importance to the Respondent's management. Circumstances here convince me that "it" was the Respondent's apprehension of the seriousness of the threat of unionism which accounted for the announcement of September 20, 1979.

In attempted explanation of the timing and content of such announcements the Respondent elicited testimony concerning a dramatic turnaround in its economic circumstances.

Dennis Wood, the Respondent's certified public accountant, testified that he was not consulted by the Respondent concerning either the June 1979 denial of a raise or September 1979 raise. However, he opined that, had he been consulted, he would have recommended in favor of the September 1979 raise and against any June 1979 raise. He testified that he would have arrived at these conclusions based on his consideration of three factors: the Respondent's historical financial production trends, the Respondent's exclusive distribution agreement, and the "fact" that the Respondent was approaching its "best six months of production during a year [by September 20, 1979]."

And Henry Tichman, a member of the Respondent's board of directors, testified that it was the business' turnaround from a "disastrous" third quarter in 1978 which convinced the board of directors on September 18 or 19, 1979, not only to grant its employees a raise, but also to grant an extraordinarily large raise, to help them "catch up" from the economic hardship caused by the fact that no raise at all had been granted in the preceding May or June. He also adverted to employee "turnover" and the "need to remain competitive"¹² as bases for the decision to grant the September 1979 raise, claiming all the while that the advent of the Union's campaign had not been brought to the attention of the board of directors until late September.

Yet Tichman's generalities proved singularly malodorous. Under cross-examination he testified without credibility, as shown by the examples which follow:

Q. So when you granted this increase you were actually looking at facing a quarter that historically had been bad?

A. Yes, but so had the previous quarter there. But we turned around in this quarter here, we didn't expect this to happen.

Q. Let me ask you something, Mr. Tichman: you say that his company has turned around in the quarter and you are referring to the third quarter of 1979?

A. It appeared to that.

¹¹ I credit the testimony of Ward and Husnee Al-Hakeem regarding their conference with Hood in early September. While I have previously expressed my view of the testimonial demeanor of Ward and Hood, a comment regarding Husnee Al-Hakeem's demeanor is appropriate here. Husnee Al-Hakeem testified in a calm, deliberative manner. He seemed to have good factual recollection, and he testified with seeming forthrightness, though, to be sure, in a soft-spoken way. Based on his demeanor I credit his testimony over that of Hood.

¹² Tichman's view of what constituted a "competitive wage" in the area of the Respondent's plant seems so purposefully selective as to lack credence. It ignores, for example, the words of Hood, who is shown, by his own handwritten notes, to have told employees at the September 20 meeting that the Respondent's wages were already higher than those paid by unionized glass plants in the area.

Q. You don't look at just one quarter and consider that a turnaround, do you, you as a businessman with these multiple companies? You don't look at just one quarter and say this business is turned around?

A. I am eternally optimistic about Scott Glass Company.

* * * * *

Q. So the company was actually making less money for the same period of time in 1979 when you granted that 7 to 7-1/2 percent increase, isn't that correct?

A. That's correct.

Q. And isn't it true or isn't it a fact that on the November 7th, 1977 increase the 5-21-78 increase and the 12-7-78 increase that those were only 5 to 5-1/2 percent?

A. They were approximately 5 percent.

So when the company is doing worse in 1979 then [sic] it did in 1978 for the same period you granted a 7 percent increase, 7 to 7-1/2 percent increase?

A. That's correct.

Q. And that increase was effective shortly after you were notified by the union, isn't that correct, that they were organizing?

A. Well, after the fact I know this.

The utter implausibility implicit in such testimony, taken together with Tichman's cavalier demeanor while testifying, caused me to conclude that the truth more likely lay in the opposite of Tichman's testimony. As the Supreme Court stated in *N.L.R.B. v. Walton Manufacturing Co.*, 369 U.S. 404, 408 (1962), quoting from *Dyer v. MacDougall*, 201 F.2d 265, 269 (2d Cir. 1952):

[For the demeanor of a witness] may satisfy the tribunal, not only that the witness' testimony is not true, but that the truth is the opposite of his story; for the denial of one, who has a motive to deny, may be uttered with such hesitation, discomfort, arrogance or defiance, as to give assurance that he is fabricating, and that, if he is, there is no alternative but to assume the truth of what he denies.

Wood's testimony was, of course, based on mere hypothesis and hindsight. He had no input, nor was he asked for any, at the time of any actual decision to either withhold or grant a wage increase. And, based on the implausibility of his testimony regarding the basis for his opinions, his opinions cannot be credited. I am not persuaded by reasoning which bases a finding of an "historical trend" upon only one instance, or which excludes from consideration contradictory or inconsistent data by the simple expedient of labeling it as a "start up" period or a "learning period." Indeed, I am unable to discern the distinction between Wood's first factor (historical financial production trends) and his third factor (the expectation that the upcoming 6 months would be the Respondent's best during the year). And Wood's second factor (the distribution agreement) has remained constant

throughout the Respondent's existence. When pressed by cross-examination regarding such logical inconsistencies Wood sought refuge in a verbal smokescreen. He claimed that additional factors underlay his previously expressed opinions. Each, in turn, was shown to be false; he had to abandon the cover of "production" in light of his own documentation that losses occurred in the last quarters of both 1978 and 1979; he next attempted to hedge by noting that shipping schedules "may have" distorted his charts and graphs, but he had to concede ultimately that the Respondent utilized the same methods for shipment, and sold its product pursuant to the terms of the same sales contract, throughout both 1978 and 1979.

So far as I can tell, the single most important factor bearing on the decision to grant a raise or not to grant a raise was, according to Wood, an historical trend, and, according to Tichman, the "great encouragement" drawn from evidence of a turnaround from a disastrous financial situation.

However, I cannot believe that reasonable business people could or would have drawn such encouragement from the evidence presented by the Respondent.

For even the *post hoc* charts and graphs prepared by Wood fail to support the Respondent's alleged optimism, suddenly gained on September 18 or 19, 1979. Indeed, a case to the contrary may be constructed off these self-same documents. The Respondent cannot be logically consistent and still claim that (1) a "trend" is established by only one prior instance, (2) the Respondent had reason to anticipate the fourth¹³ and first quarters to be its best of the year, and (3) it lost a substantial sum of money in the fourth quarter of 1978. Nor can the disparity in earnings between its third quarter earnings of 1978 and those for the same period for 1979 be viewed as reasonable evidence of a turnaround, when its year-to-date earnings for 1979 still lagged significantly, roughly 10 percent, behind those for 1978.

Thus, in conclusion, I find that the Respondent violated Section 8(a)(1) of the Act by promising a wage increase to its employees on September 20, 1979 (as alleged in par. 7(b) of the consolidated complaint), as well as by the related conduct of actually granting the wage increase on September 30, 1979.

In light of the credibility resolutions reached previously herein I also find and conclude that the Respondent threatened employees by implying that their union activities would prove to be futile (as alleged in pars. 7(c) and 7(e) of the consolidated complaint) and by soliciting grievances from employees in order to induce them not to support the Union (as alleged in par. 7(d) of the consolidated complaint). It seems only reasonable to conclude that Hood's notes accurately reflect what he intended to, and did, say to employees. And the notes (Resp. Exh. 8) show that he began by advising employees of their wage increase and followed up by speaking of "extracurricular activities." Then, in order, employees

¹³ In fact, the alleged optimism regarding the anticipated earnings for the fourth quarter of 1979 was to be dashed. In that quarter the Respondent suffered a loss of money roughly double that of its "disastrous" (according to Tichman) third quarter of 1978.

were told to solve their problems directly with him or other supervisors, that the Union could not help, that their wages were already higher than the area's unionized glass companies, and that the Respondent was not making a profit. In order that the point not be missed, Hood then returned to the theme that he had an "open door policy," so that employees should solve problems directly with him or other supervisors.

Taken in the context of the union activism, and the wage increase, and considering the entire tenor of Hood's remarks to the assembled employees, it is difficult to understand how employees could have failed to miss the point being unsubtly implied by Hood, i.e., a union contract would be possible, if at all, only after a long struggle, while wage increases and other work-related problems would be taken care of directly by the Respondent so long as the Union was not selected. As stated above, I find the delivery of such a message, especially under the circumstances then prevailing, violative of the Act.

F. Violations Attributed to Supervisor Benny Brown

1. The consolidated complaint alleges that Supervisor Benny Brown, in early October 1979, interfered with employee exercise of rights guaranteed in Section 7 of the Act by prohibiting an employee from discussing the subject of wages with other employees.

The General Counsel's evidence was that Dawan Al-Hakeem was told by Brown that Brown had been told by two other employees that Dawan Al-Hakeem had been discussing the pay raise which had been announced by Hood. Dawan Al-Hakeem denied that he had been discussing it, but testified that Brown nonetheless directed him to stop talking about the raise, and to let any such talk emanate from Hood.

The Respondent's evidence, through Brown's testimony, was to the effect that Brown asked Dawan Al-Hakeem if he had been asserting to other employees that the announced raise would be revoked, and that he made this inquiry merely to dispel a groundless rumor. Brown testified that Brown did not tell Dawan Al-Hakeem what Al-Hakeem was to say or not to say to fellow employees, though he did urge him to speak to Hood if he had questions or doubts to resolve.

I conclude that Dawan Al-Hakeem's account of this matter is entitled to greater credence than that of Brown. As explained elsewhere herein, I found that Dawan Al-Hakeem's credibility was quite good. Brown's on the other hand was just the opposite, with his demeanor being characterized by tendencies to evade, quibble, or equivocate. Nor was Brown's credibility enhanced by the fact that in several important areas his testimony was produced only after suggestive questions were put to him by the Respondent's counsel.

2. The consolidated complaint alleges that Supervisor Benny Brown, in early October 1979, interrogated an employee regarding his own and others union activities, membership, or desires.

The General Counsel's evidence, again via the testimony of Dawan Al-Hakeem, was that a few days after the incident set out above, Brown asked him if he had been talking to someone about the Union or if he had heard

someone saying something about the Union on company property. Dawan Al-Hakeem testified that he responded negatively.

The Respondent presented no evidence regarding this matter, making no inquiry about it during Brown's testimony. However, upon cross-examination, Brown did generally deny that he had ever talked to Dawan Al-Hakeem about the Union, aside from the incident mentioned above.

I conclude that Brown did interrogate Dawan Al-Hakeem about his own and other employees' union activities, in violation of Section 8(a)(1) of the Act.

G. Violations Attributed to Supervisor William A. Jones

1. It is alleged that Supervisor "Alan" Jones, on an unknown date in September 1979, threatened reprisals against employees if they engaged in union activities. Employee Michael Dudley testified that Jones once told him while he was on a break with another employee in the parking lot that, while the Union would take money from his checks it would not get anything from the Company, because the Company was broke.

Jones, while recalling that he had a conversation with Dudley in September 1979 concerning the Union, depicted a scene in which he merely responded to Dudley's questions about the possibility of a \$3-per-hour raise. He denied that he told Dudley that the Union would merely take money from their paychecks, that the Company was broke, or that no raise could be afforded.

Dudley's credibility was damaged in connection with this allegation by his obvious inability to recall when he talked to Jones. Additionally, and more significantly in my view, Dudley's testimony about what Jones said to him was quite vague, so much so as to cause me to reject it as a basis for finding either a violation of Section 8(a)(1) of the Act, or as a basis for the election objections.

Accordingly, paragraph 7(h) of the consolidated complaint stands unproven and shall be dismissed.

2. It is alleged that Jones threatened employees with the reprisals of more strict working rules if the Union came in.

Employee Terry Underwood testified that Jones told him, around September 16 or 17, that, if the Union came in, Underwood's job would be harder and Jones would be more strict in what he required Underwood to do.

Jones denied the threat, saying that he merely explained to Underwood that whenever a third party is involved there are additional matters to consider in a work relationship.

I credit Underwood over Jones. Underwood appeared to be earnestly trying to testify accurately. Jones, however, just as diligently sought to evade and shift, and clearly was less than candid in his recital of his discussion with Underwood.

I find and conclude that Jones did threaten Underwood, as alleged in paragraph 7(i) of the consolidated complaint.

3. It is alleged that Jones, on or about September 18, 1979, threatened employees with plant closure if the

Union won the election, and with discharge or other reprisals for participating in union activities. It is also alleged that Jones created the impression of surveillance of employees' union activities.

Employee Paul Benedict testified that he overheard a conversation between Jones and employee David Wilson on or about September 19, 1979, while the three sat in Jones' car at the Respondent's plant. He said that Jones and Wilson were discussing the unionization effort. He testified that Jones said that Johnny Ward was the leader, and that anyone who followed "the little leader" would wind up losing their job, as the Company could not afford to pay union wages. He also recalled Jones stating that he was "disappointed" in his roommate, employee Sam Fowler, for "sneaking around" with the Union "behind his back." Jones went on, according to Benedict, to say that he knew how much money the Company could pay, that the Company was already paying the maximum amount it could afford, and that if the Union were brought in the plant would have to shut down, so that they would all lose their jobs.

Jones denied that any such conversation as Benedict described ever took place, but placed Benedict's credibility in question by testifying that Benedict had a grudge against the Respondent growing out of a workmen's compensation controversy. He recalled that Benedict once vowed to sue the Respondent for \$30,000. Benedict, on the other hand, admitted the workmen's compensation controversy, but denied that he had made the threat alleged.

Jones' testimony was to the effect that he never participated in a conversation with Jones in the presence of Benedict, that Jones never said employees would lose their jobs if the union came in, and that Jones never said that the Respondent either could or could not afford to pay higher wages.

While certainty is not possible in instances of such direct and complete conflict as shown in the testimony of these three witnesses, I am persuaded that the version supplied by Benedict is, by far, the more credible.¹⁴ Benedict was an extremely impressive witness in his demeanor, and I was influenced to believe his testimony by his evident candor and regard for accuracy. The testimony of some witnesses has what can only be described as the "ring of truth." Benedict clearly belonged in that category.

Jones' testimonial demeanor lacked either candor or the appearance of one sincerely attempting to speak honestly. His cramped posture, his voice trailing off as he came to the end of answers, his averted eyes, and even his hand cupped over his mouth as he testified, are all viewed by me as indicators of a lack of candor and an intent to evade.

Nor was Wilson a better witness than Jones. His bias against the Union and Johnny Ward was so pronounced

as to seem palpable. The tone of his voluble and lengthy testimony, with much extraneous material being volunteered by him, seemed contrived to impress his superiors with the knowledge that he had genuine contrition for his brief period of support for the Union. His testimony regarding Alan Jones' alleged threats or impression of surveillance was, in large part, the product of leading and suggestive questions, despite the fact that Respondent's counsel was warned several times during the course of the hearing of the negative impact such questions would have on the credibility of his witnesses.

Accordingly, I find and conclude that Jones made threats and created the impression that the Respondent had knowledge most likely gained by means of surveillance of the union activities of employees, as alleged in paragraphs 7(j), 7(k), 7(l), and 7(m) of the consolidated complaint.

4. It is alleged that Jones, in October 1979, told an employee that it would be futile for employees to support the Union.

However, I find no reference thereto in the General Counsel's brief. Jones' threats to the effect that employees' union activities would prove to be futile appear to be encompassed within other allegations of the complaint.

Accordingly, paragraph 7(n) of the consolidated complaint is deemed unproven and shall be dismissed.

5. It is alleged that, on or about November 7, 1979, Jones threatened to discharge a union "ringleader" and other employees, and conditioned future employment upon voting against the Union.

The General Counsel's evidence in support of the allegations was supplied by the testimony of Husnee Al-Hakeem, who testified that, in September, he overheard Supervisor Jones tell employees Rick Hyatt and Dave Wilson that Ward was the union movement's ringleader and would be fired, and, further, if Hyatt and Wilson wished to keep their jobs, they should vote against the Union. According to Husnee Al-Hakeem, Jones concluded by warning Hyatt and Wilson that those employees who worked on behalf of the Union would be fired in the long run.

The Respondent's evidence, consisting of the testimony of both Jones and Wilson, was to the effect that Jones never made any such statements to Hyatt and/or Wilson.

This conversation was alleged to have occurred in the Respondent's lunchroom at the plant, which is situated near several pieces of machinery, including two blowers and four furnaces. The record contains a great deal of testimony regarding the physical layout of the lunchroom and the various machines, all going to the inherent probability that one could or could not overhear what was said inside the lunchroom while standing on the outside of the building near a window, as Husnee Al-Hakeem testified.

This evidence is sufficient to cause me to discredit Husnee Al-Hakeem's testimony regarding this incident, notwithstanding my previous observations about the credibility of the witnesses, Husnee Al-Hakeem, Jones, or Wilson. While I continue to regard both Jones and Wilson as generally unreliable witnesses I am unable to

¹⁴ As noted in the General Counsel's brief, background circumstances seem to square with Benedict's version of the facts. For, admittedly, Jones once had a practice of going out to his car, with others employed at the plant, during break periods. Further, Jones' "disappointment" in his roommate, employee Fowler, as testified to by Benedict, seems consistent with the fact that Jones and Fowler admittedly were forced to reach an agreement not to discuss the Union because of "hard feelings" engendered by such discussions.

accept Husnee Al-Hakeem's version of the incident as accurate.

Accordingly, I shall dismiss paragraphs 7(o), 7(p), and 7(q) of the consolidated complaint.

H. Criminal Convictions and Credibility

The Respondent argues that much of the General Counsel's evidence tending to prove unfair labor practices, objectionable conduct, and valid execution of authorization cards was supplied through the testimony of witnesses who should not be believed. It points to the fact that Johnny Ward, Dawan Al-Hakeem, Husnee Al-Hakeem, and Michael Dudley each admitted under cross-examination that they would each, at some point in their lives, run afoul of the criminal law, as set forth below:

(a) Johnny Ward testified under cross-examination that he was once convicted¹⁵ of a crime, which he stated was either burglary or breaking and entering of a pawnshop. He said that this occurred some 11 years previously, when he was 16 years of age, in the State of California.

(b) Further cross-examination of Ward resulted in his admission that he had been convicted of armed robbery of a store in the State of Arkansas some 5 years previously. He was sentenced to serve 6 years, and, in fact, he served 19 months in prison, though had been released on parole by the time of the hearing herein.

(c) Dawan Al-Hakeem, aged 28 at the time of the hearing herein, admitted that he had been convicted, sometime during the period of 1966 to 1968, of the crime of grand theft¹⁶ in Victorville, California, for which he was sentenced to a term of 2 years' probation. He served his term of probation without being picked up for violating its terms.

(d) Husnee Al-Hakeem, Dawan's younger brother, admitted that he too was convicted some 11 years previously, in Victorville, California, of the crime of possessing three-fourths of an ounce of marijuana. He was a minor at the time and was sentenced to a term of probation for 1 year.¹⁷

(e) Michael Dudley, aged 21 at the time of the hearing, admitted that when he was 11 years of age he was convicted of the crime of possessing a marijuana cigarette, causing him to be placed on probation.¹⁸

I conclude that only incident (b), above, is possessed of sufficient probative value, concerning the credibility of Johnny Ward, to warrant its admission into evidence pursuant to 609 of the Federal Rule of Evidence 609.¹⁹

¹⁵ An objection to a question by Respondent's counsel about whether he had even been arrested was sustained.

¹⁶ Objections to the questions, "What did you steal?" and "The grand theft charge arose out of what?" were sustained.

¹⁷ Upon the motion of counsel for the General Counsel the testimony concerning this matter was stricken.

¹⁸ Upon the motion of counsel for the General Counsel the testimony concerning this matter was stricken.

¹⁹ Rule 609 reads, in pertinent part, as follows:

IMPEACHMENT BY EVIDENCE OF CONVICTION OF CRIME

(a) *General Rule.*—For the purpose of attacking the credibility of a witness, evidence that he has been convicted of a crime may be elicited from him or established by public record during cross-examina-

Incidents (a), (c), (d), and (e) were each shown to have occurred 10 or more years prior to the hearing herein, at a time when each witness was a minor. At most, such evidence shows convictions so remote in time from the time when the witnesses testified herein that, even were it not for the explicit prohibition of Rule 609 (b), I would find them of little or no probative value in assessing the witnesses' credibility. Additionally, the general provision against admitting evidence of juvenile adjudications, as embodied in Rule 609(d), is based upon the sound principle that juvenile adjudications are conducted so informally, with "convictions" frequently based on a diminished quantum of required proof, and otherwise departing from accepted standards for criminal trials, that such adjudications are considered to lack the precision and general probative value of an ordinary criminal conviction. And, finally, in connection with the "convictions" having to do with juvenile use of marijuana, while I am aware of the Board's admonition against discussion of society's evident changes of viewpoint toward such usage,²⁰ I cannot fail to note that a number of courts have held that a conviction of marijuana possession does not involve dishonesty or false statement. See, generally, *Weinstein's Evidence*, Section 609, and *United States v. McLister*, 608 F.2d 785 (9th Cir. 1979), which involved an appeal from the trial court's permission to cross-examine regarding a 9-year-old misdemeanor conviction for possession of a single cigarette.²¹

tion but only if the crime (1) was punishable by death or imprisonment in excess of one year under the law under which he was convicted, and the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the defendant, or (2) involved dishonesty or false statement, regardless of the punishment.

(b) *Time limit.*—Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, evidence of a conviction more than 10 years old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

• • • • •

(d) *Juvenile adjudications.*—Evidence of juvenile adjudications is generally not admissible under this rule. The court may, however, in a criminal case allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.

²⁰ See *Ampco Metal Division of Ampco-Pittsburgh Corporation*, 247 NLRB 660 (1980).

²¹ While the Respondent also argues in its brief that I precluded its counsel from developing or probing into these matters at the hearing, I find such argument unpersuasive. For the Respondent was not precluded from making an offer of proof on these matters, even in question-and-answer form. Nor was the Respondent prevented from securing the records of convictions in these cases to the extent they have been made public. Here the hearing was in adjournment from early April 1980 until mid-June 1980, surely a period sufficient to enable the Respondent to obtain and prepare its evidence relating to prior convictions.

Turning to the question of what to do with the evidence underlying incident (b) I reach a somewhat different result, and conclude that I may, and properly should, bear Ward's conviction for armed robbery in mind when assessing his credibility. Accordingly, I hereby reverse my prior ruling at the hearing and accept the offer of proof made by Respondent at the hearing. I am aware of the dichotomy of authority on the question of what type of criminal activity may be said to evidence a willingness, even a proclivity, to speak untruthfully. See *Weinstein's Evidence*, Section 609-62, where a discussion of this question led to the conclusion that, under Rule 609(a)(2), a crime involving dishonesty or false statement is always admissible evidence for purposes of impeachment, and that the Court has no discretionary standard to apply in such situations. Its quotation, taken from then Judge Burger's opinion in *Gordon v. United States*, 383 F.2d 936, 940 (D.C. Cir. 1967), cert. denied 390 U.S. 1029 (1968), aptly illustrates the problem:

In common human experience acts of deceit, fraud, cheating, or stealing, for example, are universally regarded as conduct which reflects adversely on a man's honesty and integrity. Acts of violence on the other hand, which may result from a short temper, a combative nature, extreme provocation, or other causes, generally have little or no direct bearing on honest and veracity. A "rule of thumb" thus should be that convictions which rest on dishonest conduct relate to credibility whereas those of violent or assaultive crimes generally do not; traffic violations, however serious, are in the same category.

In reaching this determination I have noted that Ward's confessed criminal activity in robbing a store at gunpoint is not the sort of offense which seems likely to have resulted from a mere short-lived burst of impulsive emotion. Instead, it seems more likely that it involved at least a minimal amount of planning and cold, deliberate execution, having little to do with such factors as extreme provocation, a combative nature, or a short temper. Consequently while I am aware of the differing views of the courts regarding the effect upon credibility of crimes involving the taking of property,²² I find that the crime involved here, armed robbery, does involve elements of dishonesty.

However, having concluded that Ward's criminal conviction should be considered by me, I must also add that I do not believe it to be a dispositive factor with regard to his testimonial credibility. Instead, I believe that it is simply one of several factors at my disposal in making such credibility resolutions as may not be resolved by resort to other, more objective or reliable, sources.

I. The Appropriate Unit and Demand for Recognition

As noted earlier herein, on September 19, 1979, the Union sent a letter to the Respondent, claiming to represent a majority of the Respondent's production and maintenance employees for the purposes of collective bargaining. While the Respondent denied the allegations

made in the consolidated complaint relating to the demand, it appears clear that such a demand was, in fact, made. For even the Respondent's evidence was to the effect that the demand letter was received, though, so the Respondent claims, not until September 22, 1979, and, further, that its contents were not read by or known to the Respondent's responsible officials until Monday, September 24, 1979.

It thus appears that the parties are not in dispute concerning this matter in any way important to the outcome of this case. The demand for recognition was made and became known to the Respondent on either of September 22 or 24, 1979.

Nor is there a substantial dispute regarding the description of the appropriate unit for collective bargaining. The Union's demand letter cannot logically be read as a demand for anything other than a unit which is presumptively appropriate under Section 9 of the Act; i.e., single plant, employerwide, production and maintenance. Moreover, there is no evidence that the Respondent ever disputed the appropriateness of such a unit. To the contrary, again as noted earlier, the Respondent stipulated that such a unit was appropriate by its election agreement of November 21, 1979. And, finally, the Respondent, in effect, judicially admitted the appropriateness of this unit when its answer to the consolidated complaints was amended during the course of the hearing herein, to admit paragraph 8 thereof.

Accordingly, I find and conclude that the Union made a demand for collective bargaining on or about September 19, 1979, in an appropriate unit, and that since or about September 24, 1979, the Respondent has refused to voluntarily honor the Union's demand. Instead, it is apparent that the Respondent has viewed the election procedures of the Board as sufficient response to the Union.

J. The Union's Claimed Majority Status

As is also noted earlier, the Union's claim of majority status rests upon attempts to demonstrate the validity of 21 authorization cards, for the Respondent has conceded, and the evidence shows, that the appropriate unit included 34 employees during the week of September 16-22, 1979, as well as at the time the Board's election was conducted on November 21, 1979.

Thus, the question presented is whether the General Counsel has demonstrated the validity of a majority, i.e., 18 or more, of the authorization cards' signatures.

At the hearing the General Counsel proved the authenticity of eight authorization cards by means of the testimony of the signers, i.e., employees Johnny Ward, Dawan Al-Hakeem, Husnee Al-Hakeem, Michael Dudley, Erick Massey, Steve Taylor, Terry Underwood, and Paul Benedict.

The remaining 12 authorization cards which were received into evidence were authenticated on the basis of testimony from employees who either witnessed the signing of such cards, or solicited and obtained signatures on the cards under circumstances tending to indicate their authenticity.

One other card, that of William Chambers, was offered into evidence upon the testimony of Michael

²² See *Weinstein's Evidence*, Sec. 609-75.

Dudley, who claimed to have solicited and witnessed the signing of the card. This offer was rejected, however, due to the fact that doubts as to its authenticity were not credibly explained by Dudley, who could not recall why the card bore markings in three distinct colors. Moreover, unlike all other cards, Chambers' card bore no date stamp from the Board's Regional Office on its reverse side, and no adequate explanation for the discrepancy was heard. Thus, I determined that Chambers' card had not been adequately authenticated, and excluded it from evidence unless authenticated by Chambers himself. Chambers, however, was not called as a witness.

Of the 20 cards which were admitted into evidence the Respondent now disputes the validity of three, the cards of Diane Armstrong, Charley Kyle, and David Wilson. In each case the Respondent's dispute is based on its claim that, notwithstanding the established, even admitted, authenticity of each signature on the respective cards, such signatures were obtained on the Union's behalf only through the use of misrepresentations.

Husnee Al-Hakeem testified that he obtained the signatures of Diane Armstrong and Charley Kyle on authorization cards. He stated that he approached them in the Respondent's parking lot, on or about September 14, 1979, in the evening. He testified that he told Armstrong that the card was for the purpose of getting a union organized at the plant and inquired of her whether she liked the way the Respondent treated her. He recalled that she stated that she did not like the way she was being treated, and took the card and read it for several minutes. Then, after he cautioned her not to sign it if she were not sincere, she signed the card and gave it back to him. As he did with other cards he obtained, Husnee Al-Hakeem then turned the card in to Johnny Ward by leaving it in the glove compartment of Ward's automobile.

Husnee Al-Hakeem similarly testified that he obtained the card of Charley Kyle, and that he did so in the same parking lot where he had obtained Armstrong's card some 10 minutes previously. He testified that he observed Kyle fill out and sign the card after he had said much the same things regarding the card's purpose as he had said to Armstrong.

Armstrong and Kyle were witnesses for the Respondent. Both testified that it was not Husnee Al-Hakeem who solicited and obtained their signatures to authorization cards, but Johnny Ward.

Armstrong testified that Ward approached her inside the plant, telling her he wanted her to sign a card to help get a union to come into the plant. She testified that they went outside to the Respondent's parking lot at the next break period, where Ward gave her a card to sign and assured her that the card was to show her willingness to attend a meeting where she could learn more about the Union. Upon cross-examination Armstrong admitted that she filled the card out after reading the large print on it, and that she noted its language regarding application for membership in the Union. But, she repeated, Ward assured her those words meant nothing. She also admitted that Husnee Al-Hakeem was there in the parking lot, along with Ward, Kyle, and Terry Underwood,

and that Kyle signed his card at the same time she signed hers.

Kyle testified that he signed the card in response to Ward's assurances that it would merely indicate his interest in obtaining further information about the Union. However, when asked what Ward actually said Kyle could only respond that "Well, he didn't say nothing specific about it. . . . About the union or the card either as a matter of fact." I note further that it was twice necessary to advise the Respondent's counsel of the adverse effects that leading (whether by the wording of the question or the tone and inflection used by the questioner) would have on Kyle's testimony.

Based on careful consideration of the demeanor of these witnesses, and my comparison of their testimony about their meeting in the parking lot, during which Kyle and Armstrong admittedly signed cards for *somebody*, I have determined to credit Husnee Al-Hakeem's testimony over that of Armstrong and Kyle. Both Kyle and Armstrong evinced eagerness to "recite," though each also seemed uncomfortable in doing so. Husnee Al-Hakeem's testimony here, as on other points, seemed steady, assured, and truthful. And, as shown, it ultimately became clear that the versions of Kyle and Armstrong did not coincide as to what Ward or any other solicitor on behalf of the Union said to them.

I find and conclude that no credible evidence of misrepresentations to either Kyle or Armstrong has been proven.

The other card challenged by the Respondent is that of David Wilson. Dudley testified that the secured Wilson's signature on the card at Wilson's home on September 17, 1979, in the presence of Wilson's wife and Johnny Ward. Dudley testified that he explained to Wilson that the card was "just to show that he wanted the Teamsters union to represent him." Dudley testified that Wilson sat down, filled out the card after reading it, and signed it.

Wilson, on the other hand, testified that it was Ward, not Dudley, who was doing the explaining and persuading at his house. And he claimed that Ward told him and his wife that the card would do no more than show his interest in coming to meetings to learn more about the Union. As noted earlier, Wilson is not to be credited. The scenario painted by him, of a cautious, skeptical wife taking him into an adjoining room to discuss the effect of his signature, yet with neither of them ever reading the plain unambiguous language on the fact of the card, seems most improbable. When asked for details about Ward's statements to him Wilson initially found himself unable to recall more than Ward's assurances that the signature on the card would not make him a member and would not be used except to show Wilson's interest in a meeting. When asked why he did not simply tell Ward that, if the purpose of the card was in fact so limited he would sign only a card which correctly stated the purpose, Wilson expansively testified that he had asked Ward about "another way of doing this," with Ward responding, "No. [type of card] is all I have." Considering the fact that Wilson had already testified at great length about this matter, and that no such claim

was ever advanced by him until its possibility was suggested in a question put to him by me, I conclude that Wilson's testimony is remarkably imaginative. Instead, I believe that Wilson simply had second thoughts following his admitted interest in securing more money and benefits, such as dental insurance.

I am also convinced, upon consideration of the evidence concerning the manner in which authorization cards were solicited in general, as well as the specific evidence relating to Armstrong, Kyle, and Wilson, that the signatures on the cards were put there with adequate knowledge of the consequences, and not as a result of coercion or misrepresentation.

In a recent case on employee was told by the solicitor of an authorization card that the card was to "get a union representative to come down and talk to employees" and that it did not mean he was joining the Union; another employee was told that the solicitor was trying to get enough cards to get an election; and still another employee was told that "if we can get enough cards signed, we can get a union representative here to explain the Union to us, and maybe we can get a vote on it." The Board held that the cards were valid. *Jeffrey Manufacturing Division, Dresser Industries, Inc.*, 248 NLRB 33 (1980). In that case the evidence was to the effect that the employees read the words on the face of the cards.

In this case I find that Armstrong, Kyle, and Wilson each read the larger print at the top of the card, and I find it most unlikely that they each did not also read the remainder, or, at least, know of the purpose and wording of such cards by means of prior discussions with the solicitors or other employees. I believe, contrary to the Respondent's position, that the evidence is both insufficient and incredible to establish that each did not intend when signing the cards that the plain meaning of the words thereon would govern the use of the cards; i.e., that the Union was to be their voluntary and designated collective-bargaining representative. Cf. *L'Eggs Products Incorporated*, 236 NLRB 354, 415-418 (1978), *enfd.* as modified on other grounds and remanded 619 F.2d 1337 (9th Cir. 1980); *Amber Delivery Service, Inc.*, 250 NLRB 63 (1980); *Keystone Pretzel Bakery, Inc.*, 242 NLRB 492 (1979). That each later had second thoughts and cold feet cannot detract from the fact that the Union did attain majority status.

Accordingly, I find and conclude that the General Counsel has proven that a majority, 20 of the 34 members of the appropriate unit, designated and selected the Union as their collective-bargaining representative.

K. Summary and Conclusions

In early September 1979 several employees went to the Respondent's chief official to seek redress of grievances, including their perceived need for a pay raise. Their efforts resulted in an immediate threat to fire their primary spokesman, as well as the explanation that no pay raise was then possible.

So, a couple of weeks later the employees again sought help. This time, however, they turned to a union. They began actively campaigning for the support of fellow employees.

Within 2 or 3 days thereafter a supervisor threatened an employee with more onerous working conditions.

Yet another day or two later, on September 19, 1979, a supervisor created the impression of surveillance of employees' union activities, threatened employees with the possibility of the plant's closure, and threatened employees with the loss of their jobs.

The next day the Respondent's chief official called an extraordinary meeting and, reversing his position of only 2 to 3 weeks' standing, granted an extraordinary pay raise to each employee. During this meeting he solicited grievances from employees while, at the same time, he threatened that the employees' union activities would be futile.

Ten days later the pay raise became effective and began showing up in employees' paychecks in early October 1979.

Also in early October a supervisor imposed a rule against discussion of the pay raise upon an employee,²³ as well as, in a separate incident, interrogating the employee about union activities of employees.²⁴

The evidence shows a clear pattern of illegal conduct which began almost as soon as the organizational activities of employees. The illegal conduct was carried out by both high and low company officials, and it had a direct impact upon every member of the unit eligible to vote.²⁵ Consequently the Respondent's failure to meet and bargain with the Union in response to the Union's letter of

²³ Absent a valid rule or special circumstances, employees are protected in such discussions. *Hambre Hombre Enterprises, Inc., d/b/a Panchito's*, 228 NLRB 136 (1977). That such restrictions are illegal has long since been settled. "Early in the history of the administration of the Act the Board recognized the importance of freedom of communication to the free exercise of organization rights." *Central Hardware Company v. N.L.R.B.*, 407 U.S. 539, 543 (1972). "Direct personal contact is the most truly effective means of communicating not only the option of collective bargaining, but the most compelling reasons for exercising that option." *Belcher Towing Company*, 246 NLRB 666, 667 (1981).

"No restriction may be placed on the employees' right to discuss self-organization among themselves, unless the employer can demonstrate that a restriction is necessary to maintain production or discipline." *N.L.R.B. v. Babcock & Wilcox Co.*, 351 U.S. 105, 113 (1956). The facility where employees work has long been recognized as a "place uniquely appropriate" for exercise of that right of employees. *Republic Aviation Corporation v. N.L.R.B.*, 324 U.S. 793, 801, fn. 6 (1945).

²⁴ The Respondent contends that Brown's questioning of Dawan Al-Hakeem was "non-threatening." However, this contention misses the point. Interrogation is coercive whether couched in hostile or casual terms. *Quemetco, Inc.*, 223 NLRB 470 (1976). An interrogation of an employee concerning union activity can violate the Act even in the absence of any antiunion bias or coercive intent by the employer. Such interrogation is unlawful as long as the conduct may reasonably be said to interfere with the free exercise of employee rights under the Act. *Dover Garage II*, 237 NLRB 1015 (1978), enforcement denied 607 F.2d 998 (2d Cir. 1979); *Hanes Hosiery, Inc.*, 219 NLRB 338 (1975). *Together We Stand Women's Guild Day Care Center*, 256 NLRB 393 (1981); *PPG Industries, Inc.*, 251 NLRB 1146 (1980).

²⁵ An employer's unlawful conduct is magnified when directed at a small unit of employees. *Armcor Industries, Inc.*, 227 NLRB 1543, 1544 (1977); *Amber Delivery Service, Inc.*, *supra* at 66. Moreover, such serious threats as threats of plant closure, loss of jobs, or the imposition of more onerous working conditions are presumed to have widespread impact upon employees and it is the employer's burden to show that such threats remained isolated by showing that they were not discussed among other employees besides the employees directly threatened. *General Stencils, Inc.*, 195 NLRB 1109 (1972), enforcement denied on other grounds 472 F.2d 170 (2d Cir. 1972). The employer has not met that burden in this case.

September 19, 1979, constituted a violation of Section 8(a)(5) of the Act. An employer may not claim immunity from Section 8(a)(5) of the Act based on its claimed reliance upon the Board's election procedures and, at the same time, embark upon a course of unfair labor practices. *Montgomery Ward & Co., Incorporated*, 253 NLRB 196 (1980). As the Respondent's unfair labor practices had already begun by the date on which it received the Union's demand for recognition and bargaining, I find that its obligation to bargain arose upon receipt of the Union's demand letter, on September 24, 1979. *L'Eggs Products Incorporated, supra*; *Ferland Management Company*, 233 NLRB 467 (1977).

IV. THE REMEDY

The Respondent's unfair labor practices are serious in nature. They began almost as soon as the organization activities and continued well past the Union's demand for recognition. Its course of conduct, which included a promise of and a grant of an extraordinarily large wage increase, solicitation of and implied promises to remedy grievances, and threats of futility, plant closure, or job loss, was designed to impress upon employees the fact that they did not need a union to obtain satisfaction of their demands.

Such circumstances led the Board in *K & K Gourmet Meats, Inc.*, 245 NLRB 1331, 1332 (1979), enforcement denied in relevant part 640 F.2d 460 (3d Cir. 1981), to state that:

Under the principles set forth in *N.L.R.B. v. Gissel Packing Co., Inc.*, 395 U.S. 575 (1969), a bargaining order is appropriate where a union's majority is established by cards and the nature and extent of the employer's unfair labor practices render unlikely a free choice by the employees in our election. As previously set forth, Respondent's unfair labor practices were clearly designed to undermine the Union's majority status. Here, the promises of a wage increase, increased benefits, and new approaches to resolve employee grievances, coupled with the threat that the organizational campaign would be futile, result in giving the employees much if not all of what they were seeking through union representation.

In *Honolulu Sporting Goods Co., Ltd. a subsidiary of Zale Corporation*, 239 NLRB 1277 (1979), the Board quoted with approval the following statement from *Tower Enterprises, Inc., d/b/a Tower Records*, 182 NLRB 382, 387 (1970), which is directly applicable:

It is difficult to conceive of conduct more likely to convince employees that with an important part of what they were seeking in hand union representation might no longer be needed. An employer may have the right to persuade the employees that representation is not in their best interests, but it does not have the right to threaten them or confer benefits on them which are designed to influence the employees against choosing a representative. When, as here, an employer

does so, free choice in a subsequent election becomes a matter of speculation, so long as the effects of the interference remain unremedied.

In my opinion the Respondent's unfair labor practices in this case have so impaired the employees' free choice, in any new election which might be ordered, that it is only by speculation that one can envision their uncoerced selection or rejection of the Union. As stated in *Grandee Beer Distributors, Inc., supra*, 247 NLRB 1280, 1281:

... the Board has repeatedly expressed concern about the difficulty of eradicating the lingering effects of unlawful promises and grants of wage increases on union organizational campaigns. We must reiterate that concern with respect to the promise and subsequent grant of a wage increase for unit employees during the Union's organization campaign in this case.

It is axiomatic that the question of whether or not to grant a bargaining order is not to be answered by resort to mechanical means. Nonetheless, in this case, my consideration of factors such as the nature of the unfair labor practice found herein, the swiftness or suddenness which they were committed upon the Respondent's gaining knowledge of the organizational campaign, the duration or period of time over which such unfair labor practices were committed, the number or percentage of the employee complement affected by the unfair labor practices, the level of the supervision which committed them, and the likelihood of their repetition should a rerun election be directed—all lead me to conclude that the possibility of erasing the effects of past practices and of ensuring a fair rerun election by the use of traditional remedies, though present, is slight. Consequently, employee sentiment, once expressed through authorization cards would, on balance, be better protected by a bargaining order. *N.L.R.B. v. Gissel Packing Co., Inc.*, 395 U.S. 575, 614-615 (1969). I so find and conclude.

V. THE OBJECTIONS TO CONDUCT OF ELECTION

The Union's objections to the election allege matters which either coincide with or are similar to the unfair labor practice allegations of the consolidated complaints. Yet, the Respondent contends that evidence of conduct pre-dating the filing of the petition for an election herein was improperly admitted at the hearing, and can serve as no basis for overturning the election. Citing *The Ideal Electric and Manufacturing Company*, 134 NLRB 1275 (1961), the Respondent claims that, in determining whether the election should be overturned, I may not consider any incidents which occurred before the petition herein was filed on September 21, 1979, the beginning of the "critical period" during which the Board seeks to ensure the preservation of laboratory conditions preceding representation elections.

I disagree. As I have found previously herein, the Respondent, through Supervisor Brown, violated Section 8(a)(1) of the Act in early October 1979 by ordering Dawan Al-Hakeem to stop talking about the raise which

had been announced the day before the petition was filed, to become effective well within the critical period. Indeed, at the time that Brown talked to Dawan Al-Hakeem in early October the employees had not yet received any additional moneys in their paychecks. I have also found that the Respondent, through Brown, again violated Section 8(a)(1) of the Act a few days later, by interrogating Dawan Al-Hakeem about the union activities of himself and other employees.

Thus, it is evident that the substantial and across-the-board raise,²⁶ which was effective and was first paid well within the critical period, was clearly related to the violations which occurred within the critical period. As a result, I believe that I must consider instances of pre-petition conduct which adds meaning and dimension to such related post-petition conduct. See *Dresser Industries, Inc.*, 242 NLRB 74 (1979), and cases cited therein. It follows, based upon the post-petition conduct set out above, plus the pre-petition conduct of announcing an across-the-board wage increase, that the Respondent interfered with the employees' freedom of choice in the election, and that the election's results should be set aside. I so recommend. However, due to the further finding herein that a bargaining order is necessary to remedy the Respondent's violations of the Act I make no provision for a rerun election herein.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By threatening to discharge employees for engaging in protected concerted or union activities; by conveying to employees the thought that their demands could best be met through direct dealing with the Respondent and that union representation would be rendered ineffectual or futile; by soliciting and impliedly promising to remedy employees' grievances without the intervention of a union; by threatening to close its plant and thereby put all employees out of work; by promising and granting an extraordinary wage increase to all employees in order to induce them to withdraw their support for the Union; by interrogating employees about their own and others' union activities, sympathies, and leanings; by ordering employees to refrain from discussing matters such as wage increases; by threatening to impose more onerous working conditions if employees selected the Union as their representative for purposes of collective bargaining; and by creating the impression that employees' union activities were being kept under surveillance by the Respondent, the Respondent has interfered with, restrained, and coerced employees in violation of Section 8(a)(1) of the Act.

4. A unit appropriate for collective bargaining is:

²⁶ The actual grant and payment of the raise should properly be considered as a distinct violation, related to, but not merged with the violation of announcing or promising the raise. Cf. *Baker Brush Co., Inc.*, 233 NLRB 561 (1977).

All regular full-time and part-time production and maintenance employees employed at the Respondent's facility located at Pacola, Oklahoma; excluding all other employees, office clerical employees, sales employees, professional employees, guards and supervisors as defined in the Act.

5. At all times material since September 24, 1979, Chauffeurs, Teamsters and Helpers, Local Union No. 516, has been the exclusive collective-bargaining representative of the employees in the above-described unit within the meaning of Section 9(a) of the Act.

6. By failing and refusing on and after September 24, 1979, to recognize and bargain with Chauffeurs, Teamsters and Helpers, Local Union No. 516, as the representative of the employees in the above-described unit, the Respondent violated Section 8(a)(5) and (1) of the Act.

7. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

8. The Respondent did not violate the Act in any manner other than specified above.

ORDER²⁷

The Respondent, Scott Glass Products, Inc., Pacola, Oklahoma, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening to discharge employees; creating the impression of surveillance of employees' union activities; threatening employees with the imposition of more onerous working conditions; interrogating employees regarding their own and others' union activities, sympathies, or leanings; threatening to make employees' union activities ineffectual or futile; soliciting grievances and impliedly promising to remedy them without the intervention of a union; threatening to close the plant and put all employees out of work; promising and granting a wage increase; and ordering employees to refrain from discussing matters such as wage increases.

(b) Refusing to recognize and bargain collectively with Chauffeurs, Teamsters and Helpers, Local Union No. 516, as the exclusive bargaining representative of the employees in the following unit: All regular full-time and part-time production and maintenance employees employed at the Scott Glass Products, Inc., facility located at Pacola, Oklahoma; excluding all other employees, office clerical employees, sales employees, guards and supervisors as defined in the Act.

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of their rights under Section 7 of the Act.²⁸

²⁷ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

²⁸ I provide for a broad order herein in view of the broad variety of unfair labor practices committed by the Respondent, which, in my opinion, demonstrate the Respondent's disregard for the statutory protections afforded employees by the Act. In such circumstances a broad order is warranted. See *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979).

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Upon request, recognize and bargain, effective as to September 24, 1979, with Chauffeurs, Teamsters and Helpers, Local Union No. 516, as the collective-bargaining representative of the employees in the above-described appropriate unit respecting rates of pay, wages, hours, or other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Pacola, Oklahoma, facility copies of the attached notice marked "Appendix."²⁹ Copies of said notice, on forms provided by the Regional Director for

²⁹ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Region 16, after being duly signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 16, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the complaint be, and it hereby is, dismissed insofar as it alleges violation of the Act not found herein. It is further ordered that all outstanding motions inconsistent with this recommended Order are hereby denied.

IT IS FURTHER ORDERED that the election of November 21, 1979, be set aside.